

**Suburban Trails and Joseph Covino.** Case 22-CA-20553

September 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On May 27, 1998, Administrative Law Judge Howard Edelman issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed a brief in response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,<sup>1</sup> findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

*Patrick E. Daly, Esq.*, for the General Counsel.

*Frank A. Mastro, Esq. (Pruzzese, McDermott, Mastro & Murphy)*, for the Respondent.

*Mandy R. Steels, Esq.*, for the Charging Party.

<sup>1</sup> The General Counsel contends that the Respondent's counsel violated the judge's sequestration order by providing its witness, general manager Thomas Rossiter, with a copy of the transcript of the testimony of witnesses Joseph Covino and James Eller in preparation for Rossiter's testimony. The Board has held that a violation of a sequestration order may warrant striking the tainted testimony if it can be demonstrated that a party was prejudiced by the violation of the rule. See *Medité of New Mexico*, 314 NLRB 1145, 1149 (1994), enf'd. 72 F.3d 780 (10th Cir. 1995); *Gossen Co.*, 254 NLRB 339, 342-344 (1981); and *Unga Painting Corp.*, 237 NLRB 1306 (1978). After carefully scrutinizing the relevant testimony, we find that the General Counsel was not prejudiced by the violation of the sequestration order. First, we note that the judge indicated on the record that he would not take the sequestration problem into account in considering Rossiter's credibility. In addition, we note that the judge found Covino, who was the General Counsel's primary witness, to be "a totally incredible witness and not worthy of belief except where he makes admissions against his interest." The judge further found that Eller was "often vague and simply did not impress . . . as a truthful witness." In view of these findings by the judge, and in light of his having credited the Respondent's other witnesses, it is clear that Rossiter's testimony did not have a significant impact on the credibility resolutions that formed the basis for the judge's findings. Therefore, we find that the General Counsel suffered no prejudice from the violation of the sequestration order.

<sup>2</sup> The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully

**DECISION****STATEMENT OF THE CASE**

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on December 16 and 17, 1996, and September 16 and 17, 1997, at Newark, New Jersey. A complaint issued dated June 28, 1996, which alleged that Joseph Covino, an individual, was discharged by the Respondent, Suburban Trails, because of his alleged activity on behalf of Local 1589, United Transportation Union (the Union), in violation of Section 8(a)(1) and (3) of the Act. The complaint also alleged two allegations of 8(a)(1) violations of the Act.

On the entire record in this case, including my observation of the demeanor of the witnesses and full consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following

**FINDINGS OF FACT**

At all material times the Respondent is a corporation with an office and place of business in Heightstown, New Jersey (the Respondent's Heightstown facility), where it has been engaged in the intra and interstate bus transportation of passengers to points within and outside the State of New Jersey. During the preceding 12 months, the Respondent in conducting its business operations derived gross revenues in excess of \$250,000, and during the same period of time, the Respondent purchased goods and supplies valued in excess of \$5000 directly from points outside the State of New Jersey.

It is admitted, and I conclude that the Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted, and I conclude that the Union, Local 1589, United Transportation Union, is a labor organization within the meaning of Section 2(5) of the Act.

The Respondent is engaged in providing line and charter bus services throughout the State of New Jersey, in other States of the United States and in Canada. Its principal terminal is located at Monroe Township (the Heightstown garage), New Jersey. The Company employs both full-time and part-time operators. Its full-time operators and those employed in related companies have been represented for many years for purposes of collective bargaining by the Union.

Joseph Covino began his employment with the Respondent as a part-time operator in mid-January 1994. Covino most often was assigned to the Company's line run from Heightstown to the New York Port Authority bus terminal on 40th Street and 8th Avenue in Manhattan. Occasionally, he did charter work.

The Respondent maintains a lot on 39th Street, to park and as a staging area for buses going into the terminal for departure. When the lot was full, drivers would not routinely park on 39th Street and remain with their buses until time to enter the terminal. This practice generally was tolerated by the Port Authority and city of New York police.

On February 17, 1995, Covino received a parking ticket. Covino had parked his bus on 39th Street in a no-parking area described above, and left his bus to get something to eat. When he returned, the bus had been ticketed and moved by another driver into the Respondent's parking lot.

In October or November 1994, the Union initiated an organizational drive among the Respondent's part-time drivers. A Board petition was filed and an election was ultimately con-

ducted on January 5, 1995, in which the Union failed to obtain a majority of the valid votes counted.<sup>1</sup> Covino testified that only he, employee Douglas Hesselbarth, and Union Representative Jimmy Eller passed out union cards. Covino testified he passed out between 25 and 30 cards to various part-time drivers. In addition, Covino testified he frequently spoke to the part-timers, in the drivers' bus to the Red and Tan lot in Jersey City, explaining to them why he believed that the Union was in their interest and urging them to support the Union. Covino testified he also spoke to the part-time drivers about signing an authorization card or otherwise supporting the Union in the parking lot at the Heightstown garage, the Red and Tan lot, on 39th Street, or the downtown Manhattan holding area.

Covino testified that he engaged in this union activity every day, for a period of 30 days. Covino testified he did this openly; because he was instructed by Eller, a union representative, not to hide his union activity because they felt that in the event of any discrimination it would not enhance their ability to prove knowledge of this activity.

However, in response to questions put to him during cross-examination, he was unable to name a single employee to whom he had given a card, or to whom he spoke to.

The Respondent's employees, Willie Majors, Howard Harris, and George Green, credibly testified that they played an active role in the campaign and in the distribution of union cards, and that Covino played no role whatsoever, that at times Covino spoke disparagingly of the Union.

Covino testified that in December 1994 he had a conversation with Respondent Vice President Ronald Kohn, an admitted supervisor within the meaning of the Act, at the Heightstown facility. The conversation, according to Covino, took place in the dispatch area. Covino testified that Kohn asked him how he felt about the Union, and he replied that he thought that unions had served a good purpose. According to Covino, he then initiated a conversation with Kohn, in which he offered to start a suggestion program modeled after a military type program. Kohn admitted that he was active in the Respondent's campaign, speaking with part-time employees and presenting the Respondent's point of view as to the Union. He recalls that conversation with Covino, during which they discussed the upcoming election. Covino told Kohn he was not really interested in the Union. He said he had plans to leave the Respondent in the near future and build and manage a water recreation park. In fact, he said he had a meeting in a couple of weeks with Donald Trump, whom he hoped would not finance his venture. Kohn admitted that he told Covino and other employees that he did not believe the Union was necessary, that the Respondent had part-timers working for them for over 20 years, and that he felt that the Respondent had treated them fairly and would not continue to do so. Kohn denied asking Covino or any employee how they felt about the Union. Kohn did not recall seeing Covino wear a pocket protector bearing the union insignia.

Covino testified that he had two conversations with Respondent General Manager Thomas Rossiter, one before the election and one after the election. He testified that the first conversation took place about 2 weeks before the election. It took place

in the Heightstown parking lot in front of the drivers' door. Covino testified that he explained to Rossiter why he felt the Union was good. During the course of that conversation, Covino contends Rossiter said that if the Union won he was prepared to take the Company into a strike.

Covino testified that he had a second conversation with Rossiter about the election 2 weeks after the voting. He contends that during the course of this conversation Rossiter asked him to encourage the drivers to withdraw their objections to the election. He also testified that he told Rossiter that he had voted "yes."

Rossiter recalled both conversations. He credibly testified that he was at the Heightstown garage approximately 2 weeks before the election, when Covino came up to him and introduced himself. This was the first time they met. Rossiter asked him to support the Respondent in the election. Covino replied that he hadn't decided how he was going to vote. Covino then turned the conversation to his water slide project, indicating that he had talked to some of the Trump people, soliciting their financial support. Rossiter told Covino that he had had some dealings with the Economic Development Authority (EDA) and could give him the card of an individual who might be helpful to him. Rossiter denied that Covino told him that he thought the Union was good for part-time employees, or that he told him he would not take the Company out on strike if the Union won.

With regard to the second conversation with Covino, Rossiter credibly testified that he was speaking to another individual in the Respondent's New Brunswick facility parking lot when Covino came up to him. Rossiter asked him if he had contacted the EDA and inquired how the project was going. According to Rossiter, the election was not discussed during that conversation. He adamantly denied that there was any discussion with Covino of the objections. Finally, he denied that Covino told him that he had voted for the objection. Finally, he denied that Covino told him that he had voted for the Union in the election.

James Eller, a union representative, testified that he gave union authorization cards to a part-time driver, Hesselbarth, and to Covino for distribution to part-time drivers about 6 months before the petition was filed in August 1995. Eller testified he told Rossiter about the organizing effort that August. At a meeting which took place before the petition was filed, Eller testified that he told Rossiter that Covino and Hesselbarth would not ultimately be representing the part-timers after the election. Rossiter, according to Eller, called them "hotheads," but did not explain his alleged characterization. Eller identified only Leroy McPherson as another part-timer who gave out cards. Eller testified he told Rossiter about Covino and Hesselbarth because he wanted to afford them protection from retaliation, but he never told Rossiter or Kohn that McPherson was also handing out cards. Rossiter credibly denied he had any such conversation with Eller.

Willie Majors, an employee full-time driver, called by the Respondent, testified credibly that he was asked by Union Chairman James Eller to pass out cards to part-time employees. Majors did so. Majors also credibly testified that he tried to interest Covino in the Union on two occasions, as they "cushioned" to New York on a company bus. On the first occasion, Covino said that he was a trainer and did not feel he needed a union. The second conversation was also on the drivers' bus. Again, Majors tried unsuccessfully to interest Covino in sup-

<sup>1</sup> The election was conducted in Case 22-RC-11024. I take official notice that 134 employees voted in the election, of which 74 voted against the participating union and 54 voted for the petitioner. There were six challenges.

porting the Union. Majors also testified that he never saw Covino distributing cards.

Driver Howard Harris credibly testified that he, too, distributed cards at Eller's request. He recalled that Eller had given the cards to Willie Majors, Bill Bynes, Bob Armstrong, and a driver named Malishewsky. Harris testified that he would not see Covino five or six times a day. He would not "cushion" with him on the bus to New York. Harris never observed Covino solicit any other driver to sign a union card. Harris never heard Covino encourage another driver to support the Union. He never saw him wear any union insignia. Harris also recalled a conversation with Covino before the election, in which Covino said he did not want anything to do with the Union. In Harris' words, "before the election he never herd Covino discuss nothing about the Union but bad." Harris also recalled that Majors and Hesselbarth said they did not want to talk about the Union around Covino because he was not for the Union.

George Green, the third driver called by Respondent, credibly testified that he also passed out cards at Eller's request. Green told Willie Majors to leave Covino alone because Covino was one of those who was not happy with the Union people. Green never saw Covino wearing any union insignia or distributing cards on behalf of the Union.

As set forth above, Covino received a parking ticket on February 17, 1997. After he received the ticket, Covino met with Tom Rossiter, the Respondent's general manager. Covino asked Rossiter about the Respondent's policy on traffic tickets. Rossiter replied that unless it's a defective vehicle, it is the driver's responsibility to pay the ticket. Covino then asked Rossiter if he would not mind if he went down and discussed the ticket with a Port Authority police lieutenant. Rossiter told him he had no objection, provided he did not ruffle their feathers because he was concerned that they may react adversely to that type of criticism. Covino did not tell Rossiter that he had already spoken with Michael Kilcoyne, the Respondent's operations manager, and Kilcoyne had told him not to contact the police.

Kilcoyne testified that Covino asked him, "What was the Company policy regarding tickets?" Kilcoyne told him that the driver was responsible. Covino then told Kilcoyne that he had a meeting set up with the police to discuss the ticket. Kilcoyne told him that the ticket was to be fought in the courts, not with the police; that he was going to anger the police, and that he should not pursue that avenue. Kilcoyne had another conversation with Covino less than a week later. Covino told Kilcoyne that he had spoken with the police department and he had told them they ought to either enforce the no-parking rule or not enforce it. He said he told them they should make up their mind. Kilcoyne told him that his actions would not create a problem for the Company on 39th Street. Covino replied that he would not start parking his bus at the Intrepid Museum, and with that he left Kilcoyne's office.

Shortly after the above conversation, Kilcoyne testified that he began to receive telephone calls from commuters complaining of the lines at the Port Authority. He also received complaints from Willie Majors. Majors told Kilcoyne that drivers were complaining to him that the police were running them off 39th Street and, as a result, they couldn't get to the gate in time. As a result of these complaints, Kilcoyne called the Heights-town garage and told the dispatcher to have Covino give him the ticket and it would not be paid by the Respondent. He also

told him to tell Covino to go someplace else and fight his battle, in other words that he was being terminated.

Kilcoyne denied Covino's assertion that he called him a f—ing troublemaker. When Kilcoyne mentioned this to Rossiter, Rossiter indicated that he had told him he could speak to the lieutenant, but Kilcoyne said he had told Covino not to do so but, in fact, Covino had done a lot more than that. He went to an inspector and it had trickled down to hurt the Respondent. Rossiter told Kilcoyne he did not know that Covino had spoken to Kilcoyne before talking to him, and that Kilcoyne had told him not to go to the police.

That same day Covino went in and spoke to the Respondent's president, Ken Kuchin, to complain of his discharge. Rossiter was brought into the conversation and told Kuchin that at the time he indicated he had no objection to Covino speaking to a Port Authority lieutenant, but that at this time Rossiter had no knowledge that Covino had spoken to Michael Kilcoyne and that Kilcoyne had told him not to go to the police. Rossiter told Kuchin that Covino had asked him permission to see the lieutenant, but that he had gone to see several other people in the Port Authority and, as a result, they were having trouble with holding buses on the upper level of the Port Authority terminal. Rossiter told Kuchin that he felt that he was very disappointed that Covino had not been honest with him and that Covino had not told him that he had already spoken to Mike Kilcoyne, and for that reason he should not be given another chance. Rossiter conceded that he might have called Covino a "shithouse lawyer" and that he should have retained a real lawyer. Rossiter concurred in Kilcoyne's decision to discharge Covino and so indicated to Kuchin. Rossiter testified on cross-examination that he had received a telephone call from Inspector Farrell after Covino's termination, in which Farrell stated that Covino had been very polite when they discussed the ticket he received.

#### Credibility Resolutions

In order to establish whether Covino was active on behalf of the Union and whether the Respondent was aware of such activity, one must examine the credibility of Covino and Eller. Covino testified that he was active and distributed 25 cards. However when questioned on cross-examination, he was unable to recall a single employee to whom he distributed cards, nor any employee who submitted to him a signed card, or any employee he talked to about the Union. Moreover, Covino's testimony was consistently vague and unresponsive. In connection with the issue of the Respondent's knowledge of Covino's union activity Covino testified in response to a question by General Counsel that:

He [Rossiter] was aware of my activity with the Union.

But when questioned on cross-examination, Covino testified as follows:

JUDGE EDELMAN: I'd like to know how you conclude that; on what basis did you conclude that?

THE WITNESS: Rossiter, up until the time that we started to form the union, was never down—I won't say never is the—means not at all—hardly ever down in the Heights-town location. Once we established starting to get the union together, lo and behold, Rossiter showed up.

JUDGE EDELMAN: How often?

THE WITNESS: I would not say probably about once a week.

JUDGE EDELMAN: Once a week. And that was on—on any occasion when he showed up, did he observe you distributing cards or—

THE WITNESS: He did not—again, I don't know whether he did or he did not.

JUDGE EDELMAN: Well, assuming that—is there—strike that. Are there any occasions that Rossiter or any of those supervisors were present when you make a statement that, yes, they saw me distributing cards or engaged in some other union activity?

THE WITNESS: Yes, in some other activity.

JUDGE EDELMAN: What other activity?

THE WITNESS: Talking with the drivers.

JUDGE EDELMAN: Did they know what—did they overhear your conversation?

THE WITNESS: I have no idea.

JUDGE EDELMAN: Well, then—in other words, then, you can't make a statement that they knew you was engaged in union activities when you were talking with another driver. You could have been talking about work-related matters, couldn't you?

WITNESS: It's possible.

JUDGE EDELMAN: Okay. So there is no—is there any circumstance that you can state, with some positiveness, that the employer observed you engaged in union activities and was aware—

WITNESS: Observed me?

JUDGE EDELMAN: —and was aware that you were engaged in union activities?

THE WITNESS: Observed me? I don't know.

JUDGE EDELMAN: Okay. Was there any occasion that you are aware of where any of these supervisory people indicated to you that they were aware of the activities that you were engaged in?

THE WITNESS: Only after I was asked.

JUDGE EDELMAN: Asked what?

THE WITNESS: Kohn called us in—called all—almost all the part-timers in individually and asked us how we felt about the union.

JUDGE EDELMAN: Well, he asked everybody.

THE WITNESS: Sure.

JUDGE EDELMAN: Would not your testimony be that because he asked you and everybody else, that he was aware that you were engaged in union activity?

THE WITNESS: Yes.

JUDGE EDELMAN: How would not you draw that conclusion?

THE WITNESS: Because I told him that I was.

JUDGE EDELMAN: What did you say to him?

THE WITNESS: I told him that I was in favor of the union; why I felt we needed a union and—

JUDGE EDELMAN: Well, he could certainly draw from your conversation that you were pro-union, but is there anything that you said to indicate that you are active on behalf of the union, that you were distributing cards, that you were talking about the union?

THE WITNESS: Not that I recall.

JUDGE EDELMAN: So my question is, again, then, is there anything, any conduct, any statement by any of the supervisors, namely Rossiter and Kohn and Kilcoyne, that would not indicate to you that they were aware of the activities that you were engaged in?

THE WITNESS: Overtly, no.

JUDGE EDELMAN: Okay.

Accordingly, I conclude that Covino is a totally incredible witness and not worthy of belief except where he makes admissions against his interest.

I discredit James Eller, a union representative, employed by the Respondent at the time of the union campaign. Eller was often vague and simply did not impress me as a truthful witness. I find it unbelievable that Eller would not tell Rossiter that Covino and another employee, Hasselbarth would not be representing the Union after the election, because he wanted to afford them protection for their activities during the campaign, while not offering such protection to Green, Harris, Majors, and other employees who were truly active in the Union's campaign. Moreover, the independent and credible evidence, clearly establishes that Covino was an antiunion employee. I therefore totally discredit Eller's testimony.

I conclude that Majors, Harris, and Green were credible witnesses. I was very impressed with their demeanor. They were most responsive to questions put to them on direct and cross-examination. In addition, their testimony was explicit, it was very detailed and not the type of testimony that the employees would not be able to fabricate, as contrasted with Covino's vague and often unresponsive testimony. Further, I conclude that these employees had no motive to fabricate their testimony.

In addition all three of the above witnesses credibly testified that they never saw Covino wear any union insignia or any other indicia of support for the Union.

Moreover, when Covino was recalled by the General Counsel on rebuttal he did not rebut any of the testimony of Majors, Harris, or Green.

Accordingly, I conclude that Majors, Harris, and Green are credible witnesses.

I also conclude that Kohn, Rossiter, and Kilcoyne are credible witnesses. All three individuals testified in great detail, including testimony against their interest. They were responsive to questions put to them on direct and cross-examination and their cross-examination was consistent with their direct examination.

## Analysis and Conclusions

### 8(a)(1) Violations

The General Counsel alleged the Respondent violated Section 8(a)(1) of the Act.

Covino testified that in December 1995 he had a conversation with Ronald Kohn at the Heightstown facility. The conversation, according to Covino, took place in the dispatch area. Covino testified that Kohn asked him how he felt about the Union, and he replied that he thought that unions had served a good purpose. According to Covino, he then initialed a conversation with Kohn, in which he offered to start a suggestion program modeled after a military type program. Kohn testified that he was active in the Respondent's campaign, speaking with part-time employees and presenting the Respondent's point of view, as to the Union. He recalls that conversation with Covino, during which they discussed the upcoming election. Covino told Kohn he was not really interested. He said he had plans to leave the Company to build and manage a water recreation park. Kohn testified that he told Covino and other employees that he did not believe the Union was necessary, that

the Company had had part-timers working for them for over 20 years, and that he felt they had treated them fairly and would not continue to do so. He denied asking Covino or any employee how they felt about the Union. For the reasons set forth above, I credit Kohn.

Covino testified that he had two conversations with General Manager Rossiter, one before the election and one after the election. He testified that the first conversation took place about 2 weeks before the election. It took place in the Heights-town parking lot in front of the drivers' door. Covino testified he explained to Rossiter why he felt the Union was good. During the course of that conversation, Covino testified that Rossiter said that if the Union won, he was prepared to take the Company into a strike.

Covino testified that he had a second conversation with Rossiter about the election 2 weeks after the voting. He contends that during the course of this conversation Rossiter asked him to encourage the drivers to withdraw their objections to the election. He also testified that he told Rossiter that he had voted "yes."

Rossiter recalled both conversations. He testified that he was at the Heightstown garage approximately 2 weeks before the election, when Covino came up to him and introduced himself. This was the first time they met. Rossiter asked him for his support in the election. Covino then turned the conversation to his water slide project, indicating that he had talked to some of the Trump people, soliciting their financial support. Rossiter told Covino that he had had some dealings with the Economic Development Authority, and could give him the card of an individual who might be helpful to him. Rossiter denied that Covino told him that he thought the Union was good for part-time employees, or that he told him that he would not take the Company out on strike if the Union won.

With regard to the second conversation with Covino, Rossiter testified that he was speaking to another individual in the New Brunswick facility parking lot when Covino came up to him. Rossiter asked him if he had contacted the EDA and inquired how the project was going. According to Rossiter, the election was not discussed during that conversation. He adamantly denied that there was any discussion with Covino of the objections. Finally, he denied that Covino told him that he had voted for the Union in the election.

As set forth above, I do not find Covino to be a credible witness. I do find Rossiter and Kohn to be credible witnesses. Accordingly, I conclude that their conversations with Covino did not violate Section 8(a)(1) as alleged in the complaint.

#### The Discharge of Covino

In determining whether an employer discriminates against an employee because of his membership in or activity on behalf of a labor organization, the General Counsel has the burden of proving that the employees' membership in, or activities on behalf of such labor organization was a motivating factor in the discrimination alleged. Once such factor is established, the burden then shifts to the employer to establish that such action would not have taken place in the absence of the employees' membership in, or activities on behalf of such labor organization. *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1982); and *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

In view of my credibility resolutions I conclude that Covino was at all times an employee who was not interested in joining the Union, but rather was antiunion. I further conclude that he

engaged in no activity on behalf of the Union. I also conclude that the Respondent had no knowledge nor any reason to believe that Covino was engaged in any activity on behalf of the Union.

The General Counsel has based its alleged union animus on the alleged 8(a)(1) violations. In view of my conclusion that the Respondent did not violate Section 8(a)(1) as alleged I conclude that the Respondent Union did not have union animus.<sup>2</sup>

In view of the lack of union animus, and the absence of any activity on behalf of the Union by Covino, or any suspected union activity by the Respondent, I conclude that counsel for the General Counsel has failed to meet its *Wright Line* burden and accordingly conclude that the Respondent did not violate Section 8(a)(1) and (3) of the Act, as alleged.

I am 100 percent convinced the sole reason for Covino's termination was his actions following the receipt of the parking ticket by the Port Authority Bus Terminal police.

In this regard after Covino received the parking ticket, he spoke to Operations Manager Kilcoyne who told him not to go to the police, but to appeal the ticket to the court. Not satisfied with this response, Covino, then went over Kilcoyne's head and spoke with Rossiter, without telling Rossiter of his conversation with Kilcoyne. Rossiter told Covino he could see the police but not "ruffle their feathers" because the police might take it out on the Respondent's busses. Covino did speak to several police officials and complained that they should follow a uniform policy of either ticketing all busses or none at all.

As a result of Covino's several discussions with different Port police officials the Port Authority Police issued warning letters, harassed drivers to keep moving where they had previously been allowed to park. This is established by the credible testimony of Harris, Majors, Green, Kilcoyne, and even the General Counsel's own witness Martin Daner. I conclude that the General Counsel's witness Police Officer Sullivan's testimony that no tickets were actually issued to the Respondent is not inconsistent with the credible testimony described above.

I therefore conclude that Covino was discharged for insubordination in going over Kilcoyne's head to Rossiter and for the chaos that resulted immediately following Covino's complaints to the police. I also note that the discharge of Covino's complaint to the Port Police took place immediately thereafter. I further note that such activity is not alleged in the complaint as protected concerted activity.

<sup>2</sup> The General Counsel tried to introduce testimony and other evidence as to the Respondent's admitted and extensive antiunion campaign. Such campaign was determined to have been protected by Sec. 8(c) of the Act in a related representation case. Nothing that took place in this campaign was alleged to have been violative of Sec. 8(a)(1) nor was the 8(c) activity as a whole alleged in the complaint to constitute evidence of union animus. In view of the extensive litigation that could have resulted had I ruled in favor of the General Counsel, I conclude that the evidence at best would not have very little weight to establish antiunion animus. Thus, on objection by the Respondent's counsel, I refused to permit the General Counsel to elicit such testimony.

Accordingly, I conclude that the Respondent did not discharge Covino in violation of Section 8(a)(1) and (3) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent did not violate Section 8(a)(1) and (3) as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

ORDER

The complaint is dismissed in its entirety.

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes